

8 December 2014 | Issue 19-2014

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Cash consideration for unvested share options are taxable under section 25(1)

In the recent case of *Maxis Communications Berhad v Director General of Inland Revenue*, the Federal Court held that the cash consideration received by employees of Maxis in cancellation of the unvested share options were taxable under section 25(1) and not section 25(1A) of the Income Tax Act (ITA).

In that case, Maxis employees were granted options to subscribe for shares in Maxis through an Employee Share Option Scheme (ESOS). Eligible employees would sign a Share Option Agreement which specified the number of shares accepted, the price per share, and the total amount payable, and made a payment of RM1.00 resulting in a binding contract. The option vest one-third (1/3) on each anniversary (over a three year period) from the date of the offer. An eligible employee can exercise the option up to 10 years from the date of the first grant. Subsequently, due to the takeover of Maxis, employees received an Equivalent Cash Consideration (ECC) in substitution or in cancellation of all outstanding unvested options. The ECC was to be paid to them in tranches according to the original vesting schedule applicable to the outstanding options.

The Federal Court held that while the employees accepted the offer by payment of RM1.00, they did not have any right to acquire the shares prior to the anniversary date as the shares had yet to be vested to them. The ECC was held to be taxable under section 25(1) of the ITA, when it was received, and not under section 25(1A) and 32(1A) of the ITA which deal with the taxation of the rights under an ESOS when they are released.

Public Ruling 7/2014 Unit Trust Funds Part II - Taxation of Unit Trusts

The Inland Revenue Board (IRB) has issued *Public Ruling 7/2014 – Unit Trust Funds Part II - Taxation of Unit Trusts* dated 4 November 2014. This public ruling (PR) which replaces *PR6/2013* dated 23 May 2013, incorporates the Budget 2014 changes to the formula for computing special deduction for permitted expenses.

Public Ruling 8/2014 Basis Period of a Company, Limited Liability Partnership, Trust Body and Co-operative Society

The IRB has issued a new *Public Ruling 8/2014 – Basis Period of a Company, Limited Liability Partnership, Trust Body and Co-operative Society*, dated 1 December 2014. This replaces *PR5/2001* and *PR7/2001* (both dated 30 April 2001), in relation to the determination of basis period for co-operatives and companies respectively.

As in *PR5/2001* and *PR7/2001*, *PR8/2014* covers the determination of basis period in relation to:

- Commencement of operations based on the current provisions of section 21A(4) of the ITA.
- Change of accounting period, and
- A company joining a partnership.

PR8/2014 does not deal with co-operatives joining a partnership, nor the treatment of adjusted income / loss for overlapping periods as this is now dealt with under section 42(2) of the ITA.

The salient points of PR8/2014 include:

- where the first accounts of the company ends in 2013, the old provisions of section 21A(4) of ITA (prior to Finance Act 2014 [Act 761 of 2014]) still applies. Refer to example 5 in the PR for an illustration.
- where there is a change in the accounting period, the accounting period is generally accepted as the basis period as long as there is no missing year of assessment and there is not more than one set of accounts closed for each year of assessment.

The PRs are available on IRB's website at www.hasil.gov.my (Laws and Regulations > Public Rulings).

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